

TITLE 4. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to amend regulations contained in Title 4, Division 9, Chapter 6, Article 5. Assembly Bill 1618 (AB 1618, Stats. 2001, Ch. 596 - Matthews) authorizes the Department to grant a variance for developmental engine fuels providing specific conditions are met.

The Department would only grant authorization for the purpose of evaluating developmental engine fuels as part of a standards development process. The granting of a variance would allow for the collection of data to assist in the creation of generally accepted chemical and performance standards for developmental engine fuels. Sales of fuels authorized by the Department are not subject to restrictions imposed upon the sale of non-conforming fuel products as set forth in Business and Professions Code (B & P Code) Sections 13441, 13442 and 13451.

The proposed amendment establishes a procedure for the Department to grant authorization, subject to terms and conditions, including reporting requirements, for the creation of data associated with standards development. Given the lack of uniformity among developmental engine fuels, the inability to predict the composition and use of future ones, and the variable circumstances in which their sale may be authorized, the Department must, by necessity, establish reporting requirements on a case-by-case basis. The Department has made the finding that the reports required of businesses authorized to sell developmental engine fuels are necessary for the health, safety, or welfare of the people of California.

The Department retains the authority to revoke authorization at any time if the authorization holder has violated any of the terms and conditions of the authorization, or, alternatively, abandoned efforts toward the creation of generally accepted chemical and performance standards. The authorization will automatically cease, without any action by the Department, after the creation of a generally accepted chemical and performance standard for the fuel.

Finally, the Department has determined that the proposed regulations will allow engine fuel producers to utilize, for testing and data gathering purposes, developmental engine fuels that are designed to comply with the California Air Resources Board NO_x low emission air quality standards.

A public hearing regarding this proposal is not currently scheduled. However, any interested person or duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be scheduled.

Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the Department of Food and Agriculture, upon its own motion or at the instance of any interested person, may thereafter adopt the proposal substantially as set forth without further notice.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Food and Agriculture, Division of Measurement Standards, 8500 Fruitridge Road, Sacramento, California 95826. Comments may also be submitted by facsimile (FAX) at (916) 229-3026 or by e-mail at DMS@cdfa.gov. Comments must be submitted prior to 4:30 p.m. on June 4, 2002.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department and the Division of Measurement Standards' Petroleum Products Program are charged with the responsibility to establish specifications for engine fuels sold in California. The Department is required to adopt, by reference, the latest standards of a recognized consensus organization or standards writing organization, such as the American Society for Testing and Materials (ASTM). The Department has adopted ASTM standards for gasoline, diesel fuel, kerosene, and fuel oil.

In the absence of such consensus standards, the Department is still statutorily required to establish specifications for engine fuels. (B & P Code Sections 13440 and 13450.) According to the legislative history of 1993 amendments to Business and Professions Code Section 13401, "AB 2154 requires the Department of Food and Agriculture to establish specifications for gasoline and other automotive spark-ignition engine fuels, and for compression-ignition engine fuel, kerosene and fuel oil. In adopting these specifications it is the intent of the Department to adopt by reference the latest standards of the American Society for Testing and Materials (ASTM). If there are no ASTM standards for a particular fuel, the Department shall adopt an interim standard established by a recognized consensus organization or standards writing organization. If the ASTM later adopts a standard, it shall be the recognized standard." (Historical and Statutory Notes, West's Annotated California Codes, 2001 Cumulative Pocket Part, B & P Code, Section 13401.)

Manufacturers of developmental engine fuels will be permitted to market their fuels under conditions outlined in the authorization granted by the Department. By granting authorization, the Department will initiate a process resulting in the creation of chemical and performance data required for the approval of a consensus standard specification related to a particular developmental engine fuel. It can take two years or more to adopt consensus standards through an organization such as ASTM.

The proposed regulation would allow the Department to grant authorization to use developmental engine fuels for the sole purpose of evaluating new engine fuel technology, with the additional benefit of improved air quality.

Section 4144

This section is added to explain and clarify the provisions of Assembly Bill 1618 (AB 1618, Stats. 2001, Ch. 596 - Matthews), signed into law on October 9, 2001 as an urgency statute. AB1618 placed Section 13405 in the Business and Professions Code, Division 5, Chapter 14. It gives the Department the authority to grant a variance from the specifications of Chapter 14 for developmental engine fuels if specified conditions are met. This proposal would enable the Department to authorize the sale of these fuels to selected fleets of vehicles and other equipment, including diesel power generators, for the purpose of gathering the data needed to assist in the development of consensus standards for these fuels. In the absence of the proposed regulation, such sales are prohibited. The proposed regulation will therefore enable the Department to fulfill its statutory obligation to establish standards for developmental engine fuels, and encourage the development and use of alternative fuels to maintain air quality.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Secretary has initially determined that this proposal does not impose a mandate on local agencies or school districts.

The Secretary also has initially determined that this action will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposal will not have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT REGARDING EFFECT ON JOB/BUSINESSES

The Department has made an assessment that the proposed regulation may: (1) create jobs within California; (2) create new businesses within California; or (3) affect the expansion of businesses currently doing business in California.

ALTERNATIVES CONSIDERED

The Secretary must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY

Pursuant to Business and Professions Code, Division 5, Sections 12027 and 13405.

REFERENCE

The Department proposes to amend the current regulations to implement, interpret, and make specific the provisions of the Business and Professions Code, Sections 13401, 13440 and 13450.

CONTACT PERSON

Inquiries about the notice may be directed to David Lazier, Branch Chief, Division of Measurement Standards at (916) 229-3044 or Al Hebert, Petroleum Products Chemist III, Division of Measurement Standards at (916) 229-3030.

Inquiries regarding the substance of the proposed regulatory action may be directed to David Lazier, Branch Chief, Division of Measurement Standards, at (916) 299-3044.

EFFECT ON SMALL BUSINESS

The Department has made an assessment that the proposed regulations will affect small business. The impact is expected to be positive in that it will allow businesses to sell developmental engine fuels while they are gathering data to design permanent consensus standards.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the statement of reasons, and the proposed regulations in strikeout and underline form may be obtained upon request. The rulemaking file, and all information on which the proposal is based is located at the Division of Measurement Standards, 8500 Fruitridge Road, Sacramento, California 95826, and may be obtained upon request. Additionally, all documents relating to this rulemaking file may be obtained from the Department's web site located at www.cdfa.ca.gov/dms/.

Following the written comment period, the Department will adopt the proposal substantially as set forth above without further notice. If the regulations adopted by the Department differs from but is sufficiently related to the action proposed they will be available to the public for at least 15 days prior to the date of adoption. Any interested person may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

A Final Statement of Reasons, when available, may be obtained by contacting David Lazier, Branch Chief, Division of Measurement Standards, at (916) 229-3044.

DEPARTMENT OF FOOD AND AGRICULTURE

Date

Valerie Brown, Deputy Secretary